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10/557,823	02/13/2007	Pia Daniel	P70915US0	6057
136 7590 08/27/2009 JACOBSON HOLMAN PLLC 400 SEVENTH STREET N.W. SUITE 600 WASHINGTON, DC 20004				
EXAMINER				
CHRISTIAN, MARJORIE ELLEN				
ART UNIT		PAPER NUMBER		
1797				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/557,823

Applicant(s)

DANIEL, PIA

Examiner

MARJORIE CHRISTIAN

Art Unit

1797

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date: _____

DETAILED ACTION

Summary

1. This is the initial Office action based on the application filed November 25th, 2005.
2. **Claims 1-15** are pending and have been fully considered.

Priority

3. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. **Claims 1-3, 5-6, 10-15 are rejected under 35 U.S.C. 102(b) as being anticipated by US PGPub 2003/0135152, KOLLAR et al..**

As to **Claim 1**, KOLLAR discloses blood treatment equipment (Abstract, Ref. 1, specifically see Figs. 1, 2A, 2B) comprising: a blood treatment device (112) which is part of an extracorporeal blood circulatory system (Fig. 2A, B) with actuators (31-36, 46, 98-99, 401-405) controlled by a control unit (10, 300, 306, 304, 312), the control unit comprises a display and input unit (50) with a touch screen (54, 55), wherein the display

and input unit (50) comprises various mode means (for example 260b', 260b'', Pg. 21, Para. 235-236) that show various time modes of a blood treatment on the touch screen (54,55) wherein the mode means (Fig. 27, 30, 33) are selectable by an operator via the touch screen; the control unit identifies the running time mode and instructs the display and input unit to show the mode means selected from the other mode means using different symbols and establishes the end of one time mode and automatically initiates the beginning of the next and communicates this to the display and input unit, changing the representation of the selected mode means (Pg. 16, Para. 175; Pg. 17, Para. 181-182; Pg. 20, Para. 221).

As to **Claim 2**, KOLLAR discloses that the mode means are arranged with respect to one another in their time sequence (Pg. 20, Para. 221).

As to **Claim 3**, KOLLAR discloses that the mode means comprise blood treatment preparation means, blood treatment means and blood treatment after-preparation means (Ref. 242, Pg. 20, Para. 220).

As to **Claims 5-6**, KOLLAR discloses that the mode means (242) are represented in the form of a cell at one edge of the touch screen (upper left corner of Figs. 30A-L) and the remaining area of the touch screen represents further input means depending on the time mode (see rest of display in Figs. 30A-L).

As to **Claim 10**, KOLLAR discloses that the control unit (10, 300, 306, 304, 312) instructs the display and input unit (50) to display a check mark when the steps have been completed (Pg. 21, Para. 236) [*third type of symbol*], where it is implicit that its input function is deactivated if the step is completed.

As to **Claim 11**, KOLLAR discloses that the display and input unit (50) displays the mode means (242) in all time modes at the same point of the touch screen (Figs. 30A-L).

As to **Claims 12-14**, KOLLAR discloses that the blood treatment equipment comprises blood detectors and air detectors, and the control unit evaluates the values of the sensors to determine the end of a time mode and the presence of correctly mounted components (Para. 47, 330, Figs. 33).

As to **Claim 15**, KOLLAR discloses that the control unit determines the quantity of fluid conveyed by a controlled pump (6, 22, 23) to determine the end of a time mode. (Para. 53, 397)

5. **Claims 1, 5-9, 12-13, 15 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 5,247,434, PETERSON et al..**

As to **Claims 1, 7**, PETERSEN discloses an hemodialysis apparatus controlled by a control unit with a touch screen (Abstract) comprising: a blood treatment device (Fig. 1) which is part of an extracorporeal blood circulatory system with actuators (12, 14, 22, 24, 42, 50, 54, 56) controlled by a control unit (Fig. 7, C8/L36-41, examples include C13/L55-64 Blood Pump System, C16/L45-60 UF Control System), the control unit comprises a display and input unit (Fig. 8-11) with a touch screen (C8/L19-20) and various mode means that are selectable by an operator via the touch screen; the control unit identifies the running time mode and displays the selected mode using different symbols from the other modes and establishes the end of one time mode and

automatically initiates the beginning of the next one, this is communicated to the display and input unit, changing the representation of the selected mode means (C11/L8-43).

As to **Claim 2**, KOLLAR discloses that the mode means are arranged with respect to one another in their time sequence (Figs. 8-11).

As to **Claim 3**, KOLLAR discloses that the mode means comprise blood treatment preparation means, blood treatment means and blood treatment after-preparation means (C13/L9-21, C32/L29-50, C35/L3-18).

As to **Claims 5-6**, KOLLAR discloses that the mode means (i.e. Menus) are represented in the form of a cell at one edge of the touch screen (right side of Figs. 8-11) and the remaining area of the touch screen represents further input means depending on the time mode (see rest of display in Figs. 8-11).

As to **Claim 8**, PETERSON discloses that the blood treatment preparation means comprises a rinse mode, self-test mode and prime mode (C11/L28-29) [*blood system mode and preparation mode*].

As to **Claim 9**, PETERSON discloses that the blood after-preparation means comprises modes for re-infusion (C35/L3-18) and purification (C32/L29-50).

As to **Claims 12-13, 15**, KOLLAR discloses that the blood treatment equipment comprises blood detectors and air detectors, and the control unit evaluates the values of the sensors to determine the end of a time mode (C13/L5-17, C20/L40-50); and determines the quantity of fluid conveyed by a controlled pump to determine the end of a time mode (C16/L45-60, Fig. 11, see also UF Removal Control (Col. 18)).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
6. **Claim 4 is rejected under 35 USC 103 (a) as being obvious over US PGPub 2003/0135152, KOLLAR et al..**

As to **Claim 4**, KOLLAR discloses the mode means display (242) on the touch screens (Fig. 30A-L), but does not appear to expressly disclose that the blood treatment means on the touch screen has a larger area than the other mode means. However, the size of the blood treatment means on the touch screen presents no novel or unexpected result over the reference and would be an obvious matter of design choice within the skill of the art. In re Launder, 42 CCPA 886, 222 F.2d 371, 105 USPQ 446 (1955); Flour City Architectural Metals v. Alpina Aluminum Products, Inc., 454 F. 2d 98, 172 USPQ 341 (8th Cir. 1972); National Connector Corp. v. Malco Manufacturing Co., 392 F.2d 766. 157 USPQ 401 (8th Cir.) cert. denied, 393 U.S. 923, 159 USPQ 799

(1968). Further it has been held that changes in configuration are a matter of design choice. *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966). Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARJORIE CHRISTIAN whose telephone number is (571)270-5544. The examiner can normally be reached on Monday through Thursday 7-5pm (Fridays off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vickie Kim can be reached on (571)272-0579. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Krishnan S Menon/
Primary Examiner, Art Unit 1797

MC